

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
SAM BIRD, JUDGE

DIVISION I

CACR07-964

MARCH 5, 2008

SAMMIER Q. DAVIS

APPELLANT

APPEAL FROM THE BRADLEY  
COUNTY CIRCUIT COURT  
[NO. CR-05-32-1]

V.

HON. SAM POPE, JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Sammier Q. Davis appeals the revocation of his probation, challenging the sufficiency of the evidence. The State alleged in its petition to revoke that Davis had violated conditions of his probation regarding new charges, controlled substances, and fees in that he had been arrested for burglary, had admitted to smoking marijuana, and was delinquent in paying his required probation fees of \$25 a month. The circuit court found that Davis had committed these violations and therefore revoked his probation, sentencing him to three years in the Arkansas Department of Correction. We hold that the evidence was sufficient to support the trial court's findings that Davis violated conditions of his probation, and we affirm the revocation.

The revocation hearing was conducted on July 9, 2007. Chuck Lanehart, Davis's probation officer, testified that Davis had admitted smoking marijuana in August 2006, that he had passed his last test, and that drug use was no longer a concern. Lanehart also testified that Davis was delinquent \$150 on his supervision fees, having last paid two months earlier.

Homeowner Ryan Sawyer testified regarding events that occurred in his home around 8:30 p.m. on November 2, 2006, when he returned home from work. Clothes had been pulled out of his washing machine, a stove had been moved, the door to his office had been opened, and a laptop computer was missing from his office. Sawyer turned on the bedroom light, pushed the bathroom door open a bit, and discovered a man behind the door. Sawyer began running toward the front of the house and heard the man call his name twice. Sawyer recognized the voice. He turned and saw the man peering around the door, with a towel over his head but with his face exposed. Sawyer ran outside to his car and called the police. He told them that he knew the man from working with him in the past but did not know his name. No one was inside when Sawyer and the police went back into the house, and the laptop was not recovered. Sawyer picked out Davis's picture from a photo lineup.

Shawn Hildreth of the Warren Police Department testified that he investigated Sawyer's statement about previously working with Davis by contacting the previous place of employment, a tomato shed in Hermitage. The records there confirmed that the men had worked together.

Davis and his girlfriend, Hitasha Morgan, testified for the defense. They each testified that he was at home asleep at 8:30 p.m. on November 2, having followed his normal routine

of going home from work at 4:00 p.m. and going to bed. Davis further testified that one reason he still owed money on his probation fees was that he lost his job after being arrested for the burglary.

In order to revoke probation or a suspension, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation or suspension. Ark. Code Ann. § 5-4-309(d) (Repl. 2006); *Harris v. State*, 98 Ark. App. 264, \_\_\_ S.W.3d \_\_\_ (2007). Where the alleged violation is a failure to make payments as ordered, the State has the burden of proving by a preponderance of the evidence that the failure to pay was inexcusable; once the State has introduced evidence of non-payment, the burden shifts to the defendant to offer some reasonable excuse for his failure to pay. *Reese v. State*, 26 Ark. App. 42, 759 S.W.2d 576 (1988). The State need show that the appellant committed only one violation in order to sustain a revocation. *Phillips v. State*, \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Jan. 23, 2008).

A person commits residential burglary if he or she enters or remains unlawfully in a residential occupiable structure of another person with the purpose of committing in the residential occupiable structure any offense punishable by imprisonment. Ark. Code Ann. § 5-39-201(a)(1). The crime of burglary can be complete even though the intention to commit a crime after unlawfully entering the structure is not consummated. *Booker v. State*, 335 Ark. 316, 984 S.W.2d 16 (1998).

Davis argues on appeal that the State failed to prove that his failure to pay probation fees was inexcusable. He also points to his probation officer's testimony that the last drug test

was negative and that drug use was not a concern. Noting that Sawyer's original statement to police did not mention the towel, Davis questions Sawyer's ability to recognize a burglar partially covered with a towel in a darkened house. Finally, Davis relies upon his and his girlfriend's testimony that he was in their own home when the burglary occurred.

We view the evidence supporting revocation in the light most favorable to the State. *Billings v. State*, 53 Ark. App. 219, 921 S.W.2d 607 (1996). The trial court's findings will be upheld on appeal unless they are clearly against the preponderance of the evidence; because a determination of a preponderance of the evidence turns on questions of credibility and weight to be given to the testimony, we defer to the trial judge's superior position. *Jones v. State*, 355 Ark. 630, 144 S.W.3d 254 (2004). Evidence that is insufficient to support a criminal conviction may be sufficient to support a revocation. *Haley v. State*, 96 Ark. App. 256, \_\_\_ S.W.3d \_\_\_ (2006). Here, there was evidence that Sawyer returned home from work, noticed that items had been moved and that his laptop was missing, and encountered a man in his bathroom. Sawyer testified that he knew the man's voice and, despite the fact that a towel was draped over his head, recognized him as a former fellow employee. Sawyer unequivocally identified Davis by picking his picture from a photo lineup. This evidence constitutes sufficient evidence to support a finding that Davis violated the condition that he not commit any criminal offense punishable by imprisonment, which here was residential burglary.

The evidence is also sufficient to affirm the revocation on the basis that Davis violated conditions regarding payment of fees and use of controlled substances. The trial court was free to reject Davis's testimony, offered with no further explanation, that one reason for being delinquent

in his payment of supervision fees was the loss of his job on the date of his arrest. There was also testimony that Davis had admitted to smoking marijuana. The revocation is affirmed.

Affirmed.

HART and MARSHALL, JJ., agree.